sell at a certain price per unit a definite quantity of goods. The defendant later offered to deliver a greater quantity, which offer the plaintiff refused. The plaintiff received and paid for the goods in installments, and through mistake or failure to compute from the invoices the total quantity received, he accepted and paid for goods in excess of the quantity contracted for. Discovering his error, he tendered a return of the surplus and demanded a return of the corresponding sum of money. The defendant refused, and the plaintiff brought action for money had and received. The defendant demurred. *Held,* the complaint should be dismissed on the merits, the court saying that since the plaintiff necessarily knew the quantity he had received, and had either forgotten it or neglected to compute it, he was bound by his acceptance of the surplus. *Rich-Sampliner Co.* v. *Bliss, Jr. and Bensen, Jr.* (D. C., S. D., N. Y. Nov. 18, 1919). Not reported at time of going to press.

Although the plaintiff, by receiving and paying for the goods, may be assumed to have accepted them, in accordance with §§ 44(2) and 48 of the Uniform Sales Act, N. Y. Consol. Laws c. 41 (Laws of 1911 c. 511) §§ 125(2), 129, that should not preclude an avoidance of the sale on the ground of mistake. In an action to recover back money paid out by a mistake of fact, it is immaterial that the mistake was caused by forgetfulness. *Kelly* v. *Solari* (1841) 9 M. & W. *54; *Simms* v. *Vick* (1909) 151 N. C. 78, 65 S. E. 621. Similarly, where the mistake was honest, though the truth was readily available, negligence will not bar recovery, if the situation of the defendant has not been altered to his detriment, *Hathaway* v. *County of Delaware* (1906) 185 N. Y. 368, 78 N. E. 153; *Merrill* v. *Brantley* (1902) 133 Ala. 537, 31 So. 847, unless the plaintiff deliberately refrained from obtaining knowledge. *Ash* v. *McLellan* (1905) 101 Me. 17, 62 Atl. 598. Assuming that the court in the instant case meant that the plaintiff did not have actual knowledge that he was receiving a surplus at the time he accepted it, its reasoning seems erroneous. In order to sustain its decision, the court might perhaps have relied on cases holding that where notwithstanding the mistake the plaintiff receives the equivalent of the defendant's enrichment, no relief will be granted. *Kingston Bank* v. *Eltinge* (1876) 66 N. Y. 625; *Taylor* v. *Hare* (1805) 1 Bos. & Pul. (N. S.) 260. It seems difficult, however, to distingush on principle the reasoning of these cases from that in the cases where a contract induced by fraud, having been executed on both sides, is avoided and restitution granted. *Brown* v. *Norman* (1888) 65 Miss. 369, 4 So. 293.

RIGHT OF PRIVACY—INJUNCTION—MOTION PICTURES.—The defendant produced a picture of the plaintiff without her consent in a motion picture film presenting, as a current event, incidents of her investigation of a crime. Outside the theatre were posters advertising the film, on which were contained the plaintiff's name and picture. The New York Civil Rights Law, N. Y. Consol. Laws c. 6 (Laws of 1909 c. 14) §§ 50, 51, provides for injunctive relief against the use of the name or picture of a living person, for the purposes of trade or advertising, without his written consent. *Held,* two judges dissenting as to the posters, no injunction would issue. *Humiston* v. *Universal Film Mfg. Co.* (N. Y. App. Div., 1st Dept., 1919) not reported at time of going to press, reversing *Humiston* v. *Universal Film Mfg. Co.* (1917) 101 Misc. 3, 167 N. Y. Supp. 98.

It has been suggested that the injunction should not have been granted because the plaintiff became a public character and surrendered her right of privacy. 17 Columbia Law Rev. 735. In the instant case the Appellate Division classed a news film with a newspaper. It is published but once and loses interest when it is no longer news. And a newspaper is not within the statute. *Jeffries* v. *New York Evening Journal Pub. Co.* (1910) 67 Misc. 570, 124 N. Y. Supp. 780; *Moser* v. *Press Pub. Co.* (1908) 59 Misc. 78, 109 N. Y. Supp. 963. To hold otherwise would be poor public policy because it would be practically impossible to disseminate news in this way if the statute is to be interpreted as was done by the trial court. Lastly, the court distinguished this case from *Binns* v. *Vitagraph Co. of America* (1913) 210 N. Y. 51, 103 N. E. 1108, in which the statute was held to apply, because in that case the pictures were not "actually taken at the time of the occurrence of the events, but the film was taken in a studio with actors dressed for the occasion in order to present a representation of what might have occurred". As to the posters, since they incorporated more than mere statement of news, but also the picture of the plaintiff, and were found in the trial court to have been used "for the purposes of trade", their publication seems to have been a violation of both the spirit and the letter of the statute.

SALES—RISK OF LOSS—"C. I. F." CONTRACT.—The plaintiff contracted to sell the defendant goods, the price quoted being "C. I. F." buyer's place. The goods were destroyed in transit by a German submarine, no war risk insurance having been effected. *Held,* the risk of loss was on the defendant buyer from the time of shipment. *Smith Co., Ltd.* v. *Marano* (1919) 28 Pa. Dist. Rep. 848.

If the contract to sell requires the seller to pay the freight or cost of transportation to the buyer or to a particular place, it is evidence of the parties' intention that the property—risk of loss—shall not pass until the goods have been so delivered. Uniform Sales Act § 19, Rule 5, Pa. P. L. § 543. The price quoted in the instant case included cost, insurance and freight, three distinct items to be charged to and paid by the buyer, *Ireland* v. *Livingston* (1872) L. R. 5 H. L. 395, 406, even though the seller carries the risk of fluctuation of freight rates. Therefore, both on principle and on authority the court correctly excluded the case from the provisions of § 19, Rule 5, of the Sales Act, *supra,* and ruled that the risk of loss passed to the buyer on the plaintiff seller's delivery to the carrier. *Ireland* v. *Livingston, supra*; *Mee* v. *McNider* (1888) 109 N. Y. 500, 17 N. E. 424; *Staackman, Horschitz & Co.* v. *Cary* (1916) 197 Ill. App. 601; *contra, Lorimer* v. *Slade* (1905) 5 S. R. N. S. W. 71. The decision need not be based on this ground alone. That part of the contract relating to insurance must be given its due weight in interpreting the intentions of the parties. It is difficult to understand what interest the buyer would have in stipulating for insurance unless he was to bear the risk. On the other hand if the risk was to pass to him on the delivery to the carrier, insurance in transit would be of vital interest.

STOCKHOLDERS—VOTING—PURCHASE OF STOCK BY HOLDER OF PROXY.—One K, who held a proxy to vote certain stock, purchased the stock but did not record the transfer on the books of the company. The